

AGENDA

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, AUGUST 22, 2006
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: *Burnett, Livengood, Scandura, Dingwall, Ray, Horgan, Dwyer*

AGENDA APPROVAL

A. PROJECT REVIEW (FUTURE AGENDA ITEMS):

- A-1. **ENTITLEMENT PLAN AMENDMENT NO. 06-04 (AMENDMENT TO
CONDITIONAL USE PERMIT NO. 03-35 – TARGET DEPARTMENT STORE) -
Ron Santos**
- A-2. **CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE –
300 PACIFIC COAST HIGHWAY) – Rami Talleh**
- A-3. **ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS ORDINANCE) –
Rosemary Medel**

B. STUDY SESSION ITEMS:

- B-1. **PROJECT REVIEW PROCESS UPDATE – Steve Ray**

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) - NONE

D. PLANNING COMMISSION COMMITTEE REPORTS

E. PUBLIC COMMENTS – Regarding Study Session portion of Meeting

Anyone wishing to speak on Project Review or Study Session items during PUBLIC COMMENTS may do so by filling out a Request To Speak form and giving it to the Secretary. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)

F. PLANNING COMMISSION COMMENTS

ADJOURNMENT:

Adjourn to the next regularly scheduled meeting of September 12, 2006.

7:00 P.M. – COUNCIL CHAMBERS

CANCELLED: NO PUBLIC HEARINGS

HUNTINGTON BEACH PLANNING COMMISSION

Public Hearing Procedures

This statement has been prepared to provide a better understanding of the procedures for public hearings before the Planning Commission.

Regular meetings of the Planning Commission are held on the second and fourth Tuesdays of each month beginning at 5:15 p.m. in Room B-8 for a study session and then at 7:00 PM in the Council Chambers. Adjourned meetings, special meetings, and Study Sessions may be scheduled at other times.

Planning Commission proceedings are governed by the Planning Commission By-Laws, Robert's Rules of Order and the Brown Act. The following is the typical sequence of events on public hearing items:

- A. The Chairperson shall announce the item and if the public hearing is open or closed.
- B. The Planning Commission shall disclose any discussions, conversations, etc., with applicants, applicant's representatives or property owners.
- C. The staff report is presented.
- D. Questions by the Planning Commission concerning the staff report may be answered at this time.
- E. The public hearing is opened by the Chairperson.
- F. The applicant or appellant is given an opportunity to address the Commission. Time is not limited but left to the Chairperson's discretion.
- G. Public Comments: Staff will call all speakers by name. Please proceed to the podium. Individuals favoring and opposing the proposal are given an opportunity to address the Commission (up to four (4) minutes), or may choose to donate their time to another speaker if the "Request to Speak" form is filled out and given to the Secretary. A speaker who addresses the Commission on behalf of individuals who donate time are allowed a maximum of 12 minutes. Individuals who donate time must be present when the item is being discussed. Please state your name before addressing the Commission.
- H. The Commission may ask questions of speakers addressing the Commission.
- I. The public hearing is closed.
- J. The Commission will deliberate the matter at this time.
- K. The Commission then acts on the matter by continuing, approving, conditionally approving, or denying the petition.

The Planning Commission receives a staff report packet on the Tuesday preceding the meeting, allowing time to review each case and make further investigations in the field prior to the scheduled meeting.

Staff reports are available in the Planning Department, the Central Library and on the City's website (www.surfcity-hb.org) anytime on Wednesday preceding the Tuesday Planning Commission meeting.



City of Huntington Beach Planning Department **STUDY SESSION REPORT**

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Ron Santos, Associate Planner *RS*
DATE: August 22, 2006
SUBJECT: ENTITLEMENT PLAN AMENDMENT NO. 06-04 (AMENDMENT TO
CONDITIONAL USE PERMIT NO. 03-35 – TARGET DEPARTMENT STORE) –
9882 ADAMS AVE.)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

This item represents an Entitlement Plan Amendment (EPA) request filed by Pacific Land Services, representing Target Corporation, for purposes of amending two conditions of approval of Conditional Use Permit (CUP) No. 03-35. CUP No. 03-35, approved by the City Council on July 19, 2004, authorized the demolition and reconstruction of a Target store located southwest of the Adams Avenue/Brookhurst Street intersection. Specifically, the EPA request is to amend Condition of Approval No. 5f, which requires all doors on the southerly and westerly facades to remain closed at all times, and Condition of Approval No. 5g, which limits store operating hours to 7:00 a.m. to 12:00 a.m.. The proposed amendment is to allow (a): deliveries at the receiving door located along the westerly façade during approved loading dock hours (between the hours of 8:00 a.m. and 7:00 p.m. Monday through Friday, and 10:00 a.m. to 6:00 p.m. on Saturday and Sunday; and (b): to allow the store to operate 6:00 a.m. to 12:00 a.m. between Thanksgiving and New Year's Day, and 7:00 a.m. to 12:00 a.m. at all other times.

CURRENT LAND USE, HISTORY OF SITE, GENERAL PLAN DESIGNATION

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property	CG-F1 (Commercial General-.35 Floor Area Ratio)	CG-F1 (Commercial General)	Target Dept. Store
North of Subject Property (across Adams Ave.)	CG-F1 (Commercial General-.35 Floor Area Ratio)	CG-F1 (Commercial General)	Mervyn's Shopping Center
South of Subject Property	RL-7 (Residential Low Density – 7 units per acre)	RL (Residential Low Density)	Single-Family Residential
East of Subject Property	CG-F1 (Commercial General-.35 Floor Area Ratio)	CG-F1 (Commercial General)	Stater Bros. Shopping Center
West of Subject Property	RL-7 (Residential Low Density – 7 units per acre)	RL (Residential Low Density)	Single-Family Residential

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

Entitlement Plan Amendment: August 15, 2006

MANDATORY PROCESSING DATE(S):

Within 60 days from CEQA Exemption Determination
(October 13, 2006)

CEQA ANALYSIS/REVIEW

The requested entitlement plan amendment is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305 – *Minor Alterations in Land Use Limitations* of the CEQA Guidelines.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The Departments of Building & Safety, Fire, Police and Public Works reviewed the original Conditional Use Permit application for the Target store and identified applicable code requirements and suggested conditions of approval. All applicable code requirements and adopted conditions of approval were applied to the project and are reflected in the existing condition of the developed site. This entitlement plan amendment request does not present issues within the purview of other City Departments.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

The following represents the timeline for the various formal actions taken by the City with respect to CUP No. 03-35:

- April 14, 2004: Approved by the Zoning Administrator.
- May 25, 2004: Approved by the Planning Commission on appeal. (traffic signal)
- July 19, 2004: Approved by the City Council on appeal. (traffic signal)
- September 29, 2004: Entitlement Plan Amendment Approved by Planning Department (garden center)
- August 2, 2005: Entitlement Plan Amendment No. 05-01 approved by Zoning Administrator (delivery hours).
- September 27, 2005: Entitlement Plan Amendment No. 05-01 approved by Planning Commission (delivery hours); six-month review required
- April 25, 2006: Six-Month Review received and filed by Planning Commission, additional six-month review required).
- June 19, 2006: Six-Month Review received and filed by City Council on appeal; (amended delivery hours, deleted requirement for additional six-month review).

At the June 19, 2006 meeting, the City Council requested that the Planning Commission take action on the to-be-filed entitlement plan amendment application within 60 days of submittal of the application. The application for Entitlement Plan Amendment No. 06-04 was filed by Pacific Land Services on August 1, 2006.

A noticed public hearing of Entitlement Plan Amendment No. 06-04 is scheduled for the September 12, 2006, Planning Commission meeting.

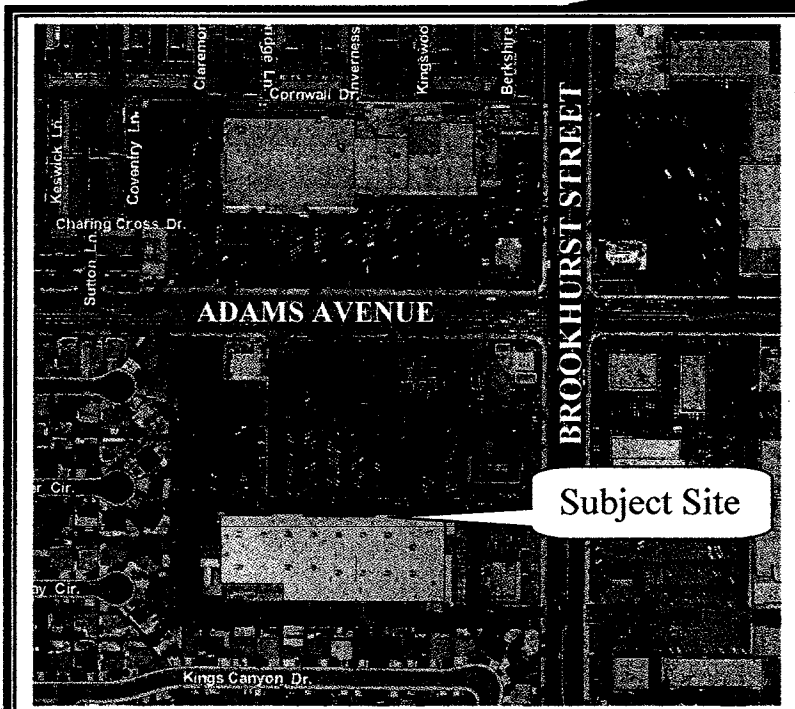
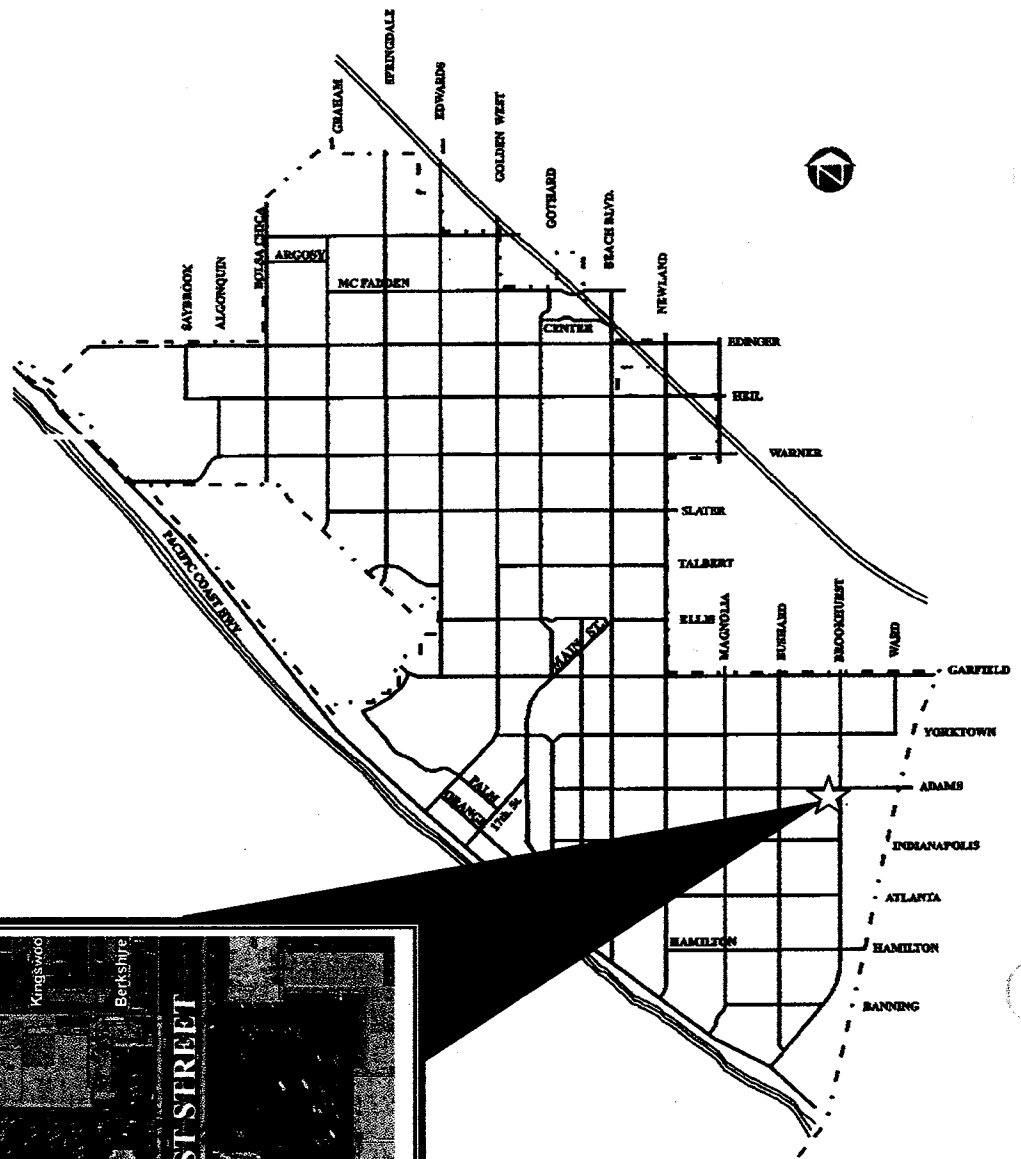
PLANNING ISSUES

The primary issue for the Planning Commission to consider in conjunction with this entitlement plan amendment request is the potential noise related impacts on surrounding residential properties.

ATTACHMENTS:

1. Vicinity Map
2. City Clerk Notice of Action dated June 19, 2006 – Appeal of Six-Month Review of CUP No. 03-35
(includes conditions of approval as last amended)
3. City Council Minutes – June 19, 2006

HZ:HF:RS:cs



VICINITY MAP

Entitlement Plan Amendment No. 06-04

9882 Adams Avenue

THE CITY OF HUNTINGTON BEACH

ATTACHMENT NO. 1.1



CITY OF HUNTINGTON BEACH

2000 MAIN STREET

CALIFORNIA 92648

OFFICE OF THE CITY CLERK
JOAN L. FLYNN
CITY CLERK
NOTICE OF ACTION

June 26, 2006

Planning Department
City of Huntington Beach
2000 Main Street
Huntington Beach CA 92648

SUBJECT: Appeal of the Planning Commission's Acceptance of the Six-Month Review of Conditional Use Permit (CUP) 03-35 (Target Loading and Delivery Operations Condition) and Imposition of an Additional One-Year Review Period, and Receive and File as Adequate CUP No. 03-35 With Amended Conditions of Approval and No Additional One-Year Review

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: 9882 Adams Avenue (southwest corner of Brookhurst St. and Adams Ave.)

DATE OF ACTION: June 19, 2006

On Monday, June 19, 2006 the City Council of the City of Huntington Beach took action on your application and approved the Staff Recommendation as amended for Conditional Use Permit No. 03-35 with conditions of approval (attached).

If you have any questions, please contact Paul DaVeiga, Associate Planner at (714) 536-5271.

Sincerely,


Joan L. Flynn
City Clerk

Enclosure: Conditions of Approval: CUP No. 03-35

c: Howard Zelefsky, Director of Planning
Paul DaVeiga, Associate Planner
Mayor Sullivan and Councilmember Green
John Warren, Pacific Land Services

g:/followup/appeal/decision-90daylter-combo.doc

(Telephone: 714-536-5227)

ATTACHMENT NO. 2.1

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. 03-35

CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 03-35:

1. The site plan, floor plans and elevations received and dated March 18, 2004 shall be the conceptually approved layout with the following modifications:
 - a. The loading dock enclosure shall be constructed with sound absorbing material designed to minimize noise impacts associated with loading and unloading activities. Truck loading and maneuvering shall be designed to provide the greatest separation possible from the adjacent residential properties. The architecture colors and materials of the enclosure shall be consistent with the overall building architecture.
 - b. The architecture colors and materials of the garden center shall be consistent with the overall building architecture.
 - c. The design, colors, and materials for the subject building shall be reviewed by the Design Review Board (DRB) following approval by the Planning Commission.
 - 1) Elevations shall be revised to incorporate multiple roof planes and/or a variety of roof slopes to reduce the overall mass and bulk of the building and comply with the Urban Design Guidelines.
 - 2) The overall architectural theme shall reflect a contemporary architectural design consistent with the design concept identified on elevation dated April 14, 2004. Several massing elements, in various volumes, shall be incorporated into the design. Varied use of earth tone colors and quality exterior materials such as stone veneer, split-face block, or other similar material shall be incorporated to accent prominent portions of the building façades.
 - 3) The design of the garden center shall incorporate an enhanced entry design which shall have the appearance of a secondary storefront. The design of the garden center shall include similar architectural design as the overall building.
 - 4) A public art element shall be integrated and be in a location that is visible to the public within the project site. Public art shall incorporate the following:
 - i) Artistic excellence and innovation
 - ii) Appropriate to the design of the project
 - iii) Indicative of the community's cultural identity (ecology, history, society)

The Design Review Board's recommended public art element shall be reviewed and approved by the Planning Director, prior to issuance of a building permit for the project. The public art shall be in place at the subject site prior to final building inspection.
 - d. The cart corrals shall be constructed with a durable material such as concrete block. The design of the cart corrals shall be consistent with Sheet 6 of the conceptual plans dated March 18, 2004. The colors and materials used on the cart corrals shall be consistent with the subject building.
 - e. All non-conforming signs shall be eliminated from the subject site, including the one pylon sign along the Adams Avenue frontage and a second pylon sign along the Brookhurst Street frontage. A planned sign program for all signage on the subject property and outlying commercial pads shall be submitted to the Planning Department. Said program shall be approved prior to the first sign permit request.

- f. Prior to submittal for building permits. The applicant shall submit a copy of the revised site plan, floor plans and elevations pursuant to Condition No. 1 for review and approval, and inclusion in the entitlement file to the Planning Department and submit 8.5 inch by 10 inch colored elevations, materials board, and renderings to the Planning Department for inclusion in the entitlement file.
 - g. All parking that is proposed behind the store, within the access gates, shall be designated as employee-only parking.
 - h. A minimum of two speed bumps shall be provided behind the building, subject to review and approval by the Fire Department.
 - i. All perimeter trees located directly adjacent to residential properties shall be of a species that is non-deciduous and results in minimal impacts in maintenance and upkeep to adjacent properties.
2. Prior to issuance of a grading permit, the following shall be completed:
- a. The site plan received and dated April 14, 2003 shall be the approved layout except for the following: (PW)
 - 1) The driveway on the south side of the property along Brookhurst Street shall be widened to a minimum of 36-feet in width, to allow for two egress lanes.
 - 2) A minimum 10-foot sight triangle must be provided at all points on the site, including the building corners. Areas of concern include the northwest corner (at the loading dock) and northeast corner of the building. The sidewalk must also be extended a minimum of four feet west of the building corner.
 - 3) A truck-tracking exhibit, utilizing a WB-50 design vehicle, must be provided to demonstrate that delivery trucks can be accommodated. This truck tracking exhibit must illustrate a truck entering the site, accessing the loading docks and egressing the site. It must be demonstrated that the truck movements will not encroach into opposite directions of roadway traffic nor impact the parking spaces shown.
 - 4) A traffic signal shall be constructed at the main driveway entrance on Adams Avenue. This traffic signal shall include the installation of interconnect conduit and cable to the traffic signal controller cabinet at the intersection of Brookhurst Street and Adams Avenue. A traffic signal and maintenance easement shall be provided in the driveway area. The appropriate curb ramp and signing & striping modifications shall be made to accommodate the traffic signal installation. (PW/MM)
 - 5) The applicant shall provide the legal description(s), plat(s), and supporting documents necessary for the City to quitclaim any abandoned portions of the existing water line easement dedicated to the City of Huntington Beach. (PW)
3. Prior to issuance of building permits, the following shall be completed:
- a. An "Acceptance of Conditions" form shall be properly executed by the applicant and an authorized representative of the owner of the property, recorded with the County Recorder's Office, and returned to the Planning Department for inclusion in the entitlement file. Conditions of approval shall remain in effect in the recorded form in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.

- b. The public art element shall be approved by the reviewed by the Design Review Board and approved by the Planning Director.
4. The structure(s) cannot be occupied, the final building permit(s) cannot be approved, and utilities cannot be released for commencement of use and issuance of a Certificate of Occupancy until compliance with all conditions of approval specified herein are accomplished and verified by the Planning Department.
5. The use shall comply with the following:
 - a. Target product delivery and trash pickup shall be permitted between the hours of 8:00 a.m. to 7:00 p.m. Monday through Friday and 10:00 a.m. to 6:00 p.m. on Saturday and Sunday.
 - b. Delivery trucks shall not leave engines idling while delivering merchandise to the Target store. Trucks shall turn-off engines once they reach the loading dock. (MM)
 - c. There shall be no loudspeakers or other amplified devices within the garden center, at any time. (MM)
 - d. Rubber noise seals shall be provided around the opening to the building at the location of the loading dock. (MM)
 - e. The trash compactor shall not be operated before 8:00 AM and after 7:00 PM. (MM)
 - f. All doors along the southerly and westerly facades of the building shall remain closed at all times. (MM)
 - g. The hours of operation for the Target store shall be from 7 a.m. to 12 a.m. The access gates to the rear of the building shall remain closed from 10:00 p.m. to 7:00 a.m.
 - h. Parking lot lights shall be automatically dimmed to minimal security level lighting one hour after closing.
 - i. The Target Department Store shall be designated as a single user with a maximum of 10 percent of the gross building floor area devoted to an ancillary retail/restaurant tenant.
 - j. Any re-use of the site or request for future demising walls to allow for a new use within the subject building shall require approval of a conditional use permit by the Planning Commission.
 - k. All outdoor display of seasonal, holiday, special events, and temporary outdoor sales events within the parking lot, on sidewalks, or any other portion of the project site shall be subject to the Huntington Beach Zoning and Subdivision Ordinance Code. At no time shall a Temporary Use Permit be granted for the area between the subject building and the southerly or westerly property lines.
 - l. There shall be no outside storage of storage containers or bins, vehicles, vehicle parts, equipment, or trailers. There shall be no outside storage of pallets or other product at any time without the required permits.
 - m. There shall be no loitering by patrons or employees within the parking areas located at the rear of the subject building. Signs shall be posted to indicate that no loitering in all parking areas located behind the subject building. Store managers shall be responsible for regulating all activity occurring at the rear of the subject building at all times.

- n. A store liaison shall be permanently established and available to assist neighbors and residents with issues regarding the site during construction and after completion of the project when the development is open for business. A sign identifying the store contact and telephone number shall be permanently posted on-site.
 - o. All Mitigation Measures of Mitigated Negative Declaration No. 03-02 shall be adhered to.
6. Within 30 days of Planning Commission action on the six-month review, the following signs shall be installed (**AMENDED 4/25/06**):
- a. A sign(s) prohibiting truck idling, identifying the permitted hours for loading and delivery, and providing a store contact shall be placed in a conspicuous location adjacent to the loading dock. The sign shall be sized appropriately in order that it can be clearly viewed by truck drivers entering the loading dock area. The sign(s), the text, and location shall be submitted to the Planning Department for review and approval prior to installation. (**AMENDED 4/25/06**)
 - b. A sign shall be installed at the southeasterly portion of the building that indicates "No thru traffic" and "No deliveries permitted". The sign shall be placed in a conspicuous location with the text and location subject to the review of the Planning Department prior to installation. (**AMENDED 4/25/06**)
7. The Planning Director ensures that all conditions of approval herein are complied with. The Planning Director shall be notified in writing if any changes to the site plan, elevations and floor plans are proposed as a result of the plan check process. Building permits shall not be issued until the Planning Director has reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action and the conditions herein. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the Huntington Beach Zoning and Subdivision Ordinance.
8. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

(City Council) Public Hearing Held – Appealed the Planning Commission's Acceptance of the Six-Month Review of Conditional Use Permit (CUP) No. 03-35 (Target Loading and Delivery Operations Condition) and Imposition of an Additional One-Year Review Period, and Received and Filed as Adequate CUP No. 03-35 With Amended Conditions of Approval as Amended and No Additional One-Year Review; Approved Request to Process Entitlement Plan Amendment with the Planning Commission for Hours of Operation within 60 Days.

Mayor Sullivan announced that this was the time noticed for a public hearing to consider the following:

APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF THE SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 03-35 (TARGET - TRUCK DELIVERY HOURS AT 9882 ADAMS):

Appellants: Mayor Sullivan and Councilmember Green

Applicant: City of Huntington Beach

Request: A six month review of Conditional Use Permit No. 03-35 as required under Entitlement Plan Amendment No. 05-01, approved by the Planning Commission on September 27, 2005. The review is to ensure compliance with the approved conditions of approval regarding loading and delivery operations for the Target Department Store.

Location: 9882 Adams Avenue (southwest corner of Brookhurst St. and Adams Ave.)

Project Planner: Paul Da Veiga

Legal notice as provided to the City Clerk's Office by staff had been mailed, published and posted.

Associate Planner Paul Da Veiga gave a PowerPoint report titled *Target - Six Month Review*, which was included in the agenda packet.

Councilmember Green asked for clarification on the Staff recommendation, specifically which conditions can be altered by Council, and suggested extended delivery hours on Sundays. Planner Da Veiga responded, stating the current conditions do not allow Sunday deliveries, but that the applicant had requested them. Planning Director Zelefsky explained a change in operating hours would require public notice. City Attorney McGrath clarified Council may change delivery days and hours as part of this review.

Councilmember Green asked for further clarification on lighting restrictions. Planner Da Veiga explained that lighting restrictions are a Code Enforcement issue and have been addressed. Councilmember Hardy asked about signage, and if Target has requested extended hours of operation on holidays. Planner Da Veiga explained he has not yet received a request for extended hours in writing, and that signs will be examined after a decision is made on the appeal.

Mayor Sullivan declared the public hearing open.

Chris Long, Pacific Land Services for Target Corporation, stated his understanding that delivery hours could be addressed during this public hearing and asked Council to consider extended holiday hours, between Thanksgiving and New Year's Day, in a separate hearing. He described problems for the Target Corporation pertaining to the lack of Sunday delivery hours and with restrictions on smaller vendors, which require them to use the front door for delivery instead of the man door. He asked Council to approve expanded delivery hours, from 10:00 a.m. to 6:00 p.m. Saturdays and Sundays for large delivery trucks. He requested the Conditions of Approval, paragraph 5a, be rewritten to allow delivery hours Monday through Friday, 8:00 a.m. to 7:00 p.m. for large trucks and Saturdays/Sundays 10:00 a.m. to 6:00 p.m. and smaller delivery trucks 8:00 a.m. to 12:00 p.m. Monday through Friday, with access to the man door. He asked that paragraphs 5f and 5g be modified pertaining to store hours. (1:38:46)

Francis Arciaga reiterated concerns he had voiced earlier with regards to lighting and residential disturbances. He asked Council to require deflectors on the light fixtures. (1:46:50)

Pamela Manke, resident whose backyard abuts the Target parking lot, voiced concerns with loading disturbances she has experienced since the store has been remodeled. She asked Council not to extend the delivery hours, stating a significant negative impact on her life due to motor noises, refrigeration noises, fumes, and truck backup noises. (1:47:49)

Robert Copeland stated his backyard is directly across the parking lot from the man door and described noise disturbances. He suggested several more delivery bays should have been constructed and asked Council to leave the delivery hours as they are currently allowed. (1:51:02)

There being no persons present to speak further on the matter and there being no further protests filed, either written or oral, the Mayor declared the public hearing closed.

Councilmember Cook asked staff for clarification on drainage and lighting concerns mentioned by the public speakers. Associate Planner Da Veiga stated Code Enforcement would investigate these issues further. Councilmember Bohr inquired about delivery hours prior to remodeling of the store. Planner Da Veiga explained there were no restrictions prior to the remodel. He also reported, per Councilmember Bohr's request, on more expansive delivery hours for Home Depot, Wal-Mart and Lowe's in the City. Councilmember Green inquired about the access gate, and Planner Da Veiga clarified the gate is closed during business hours. City Attorney McGrath clarified that changes to access door restrictions would require further public notice.

In response to an inquiry from Council, Mr. Long stated his opinion the entire Conditional Use Permit (CUP) is up for review. Planner Da Veiga reiterated that only delivery issues are up for review. Mayor Sullivan asked for an explanation of the process to address the other issues discussed. Planning Director Zelefsky clarified the applicant would be required to file a request to modify the entitlement, then the Planning Commission would review the request, unless Council requests otherwise. Councilmember Cook voiced concerns with making several changes to the entitlement without public notice, stating she will oppose such changes. Councilmember Green stated her understanding the Council could consider the entire CUP at this meeting.

Mayor Sullivan stated his opinion the delivery hours approved by the Planning Commission are too restrictive.

Councilmember Green inquired about Council's ability to make changes to store operating hours. Director Zelefsky clarified the Zoning Code requires these types of changes go to the Planning Commission. Councilmember Green asked that the Commission review such a request within thirty days. City Attorney McGrath clarified any modification to paragraph 5a of the Conditions of Approval would be within Council's purview at this hearing. She suggested Council delete the last sentence of paragraph 5a. Councilmember Hardy inquired about the man door; Director Zelefsky explained the requirement for fire exits. Councilmember Bohr voiced his support for the motion and requested that the applicant's entitlement plan change requests be submitted to the Planning Commission within sixty days.

A motion was made by Sullivan, second Green to receive and file as adequate the six-month review of Conditional Use Permit No. 03-35 with amended conditions of approval and no further review required as amended to replace paragraph 5a of the Conditions of Approval with the following: Target product delivery and trash pickup shall be permitted between the hours of 8:00 a.m. and 7:00 p.m. Monday through Friday and between 10:00 a.m. and 6:00 p.m. Saturday and Sunday. The motion carried by the following roll call vote:

AYES: Bohr, Green, Sullivan, Hardy, and Hansen
NOES: Cook
ABSENT: Coerper

A motion was made by Bohr, second Green to request the Planning Commission process an entitlement plan amendment pertaining to hours of operation within sixty days of Target applicant's request. The motion carried by the following roll call vote:

AYES: Bohr, Green, Sullivan, Hardy, and Hansen
NOES: Cook
ABSENT: Coerper



City of Huntington Beach Planning Department **STUDY SESSION REPORT**

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rami Talleh, Associate Planner *RT*
DATE: August 22, 2006

**SUBJECT: CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE –
300 PACIFIC COAST HIGHWAY, SUITE NO. 112)**

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

Conditional Use Permit No. 06-20 represents a request for the following:

To allow the establishment of a 5,000 sq. ft. restaurant, alcohol sales, live entertainment and dancing, up to four billiard tables, and a phased outdoor dining area (Phase One: 400 sq. ft., and Phase Two: 600 sq. ft.) for a combined total of 1,000 sq. ft. The sale of alcoholic beverages is proposed throughout the restaurant and outdoor dining areas. The live entertainment consists of a DJ playing pre-recorded music with a 200 sq. ft. dance floor and a mechanical bull. The hours of operation for the restaurant are proposed between 7:00 am and 2:00 am daily. The outdoor dining area will be operated from 11:00 am to 9:00 pm Monday through Thursday and 11:00 am to 10:00 pm Friday through Sunday. Live entertainment will be provided between 6:00 pm and 1:30 am daily and the mechanical bull will be operated upon request during business hours. The applicant requests that dancing occur between 9:00 pm and 1:00 am Thursday through Sunday.

CURRENT LAND USE, HISTORY OF SITE, GENERAL PLAN DESIGNATION

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	MV-F12-sp-pd (Mixed Use Vertical)	Downtown Specific Plan District 3/Coastal Zone	Retail/Office/Restaurants
North of Subject Property (across Walnut):	MV-F6/25-sp-pd (Mixed Use Vertical)	Downtown Specific Plan District 5/Coastal Zone	Main Promenade/ Parking Structure
East of Subject Property:	MV-F12-sp-pd (Mixed Use Vertical)	Downtown Specific Plan District 3/Coastal Zone	Pier Colony–Residential Condominiums
South of Subject Property: (across PCH)	CV-d (Commercial Visitor-Serving)	Downtown Specific Plan District 10/Coastal Zone	Pier/Restaurants/Beach
West of Subject Property: (across Main)	MV-F12-sp-pd (Mixed Use Vertical)	Downtown Specific Plan District 3/Coastal Zone	Ocean View Promenade Retail/Office

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

Conditional Use Permit: August 15, 2006

MANDATORY PROCESSING DATE(S):

October 15, 2006

Conditional Use Permit No. 06-14 was filed on April 20, 2006 and deemed complete August 15, 2006. The application is tentatively scheduled for the Planning Commission meeting of September 12, 2006.

CEQA ANALYSIS/REVIEW

The proposed project is Categorically Exempt pursuant to Class 1, Existing Facilities, Section 15301 of the California Environmental Quality Act, which states that minor alterations and operation to existing structures are exempt from further environmental review.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

Comments from other City Departments have been transmitted to the applicant separately. The Police Department has expressed concerns with the proposed live entertainment, dancing, and hours of operation for the outdoor dining area (see Attachment No. 3).

PUBLIC MEETINGS, COMMENTS AND CONCERNS

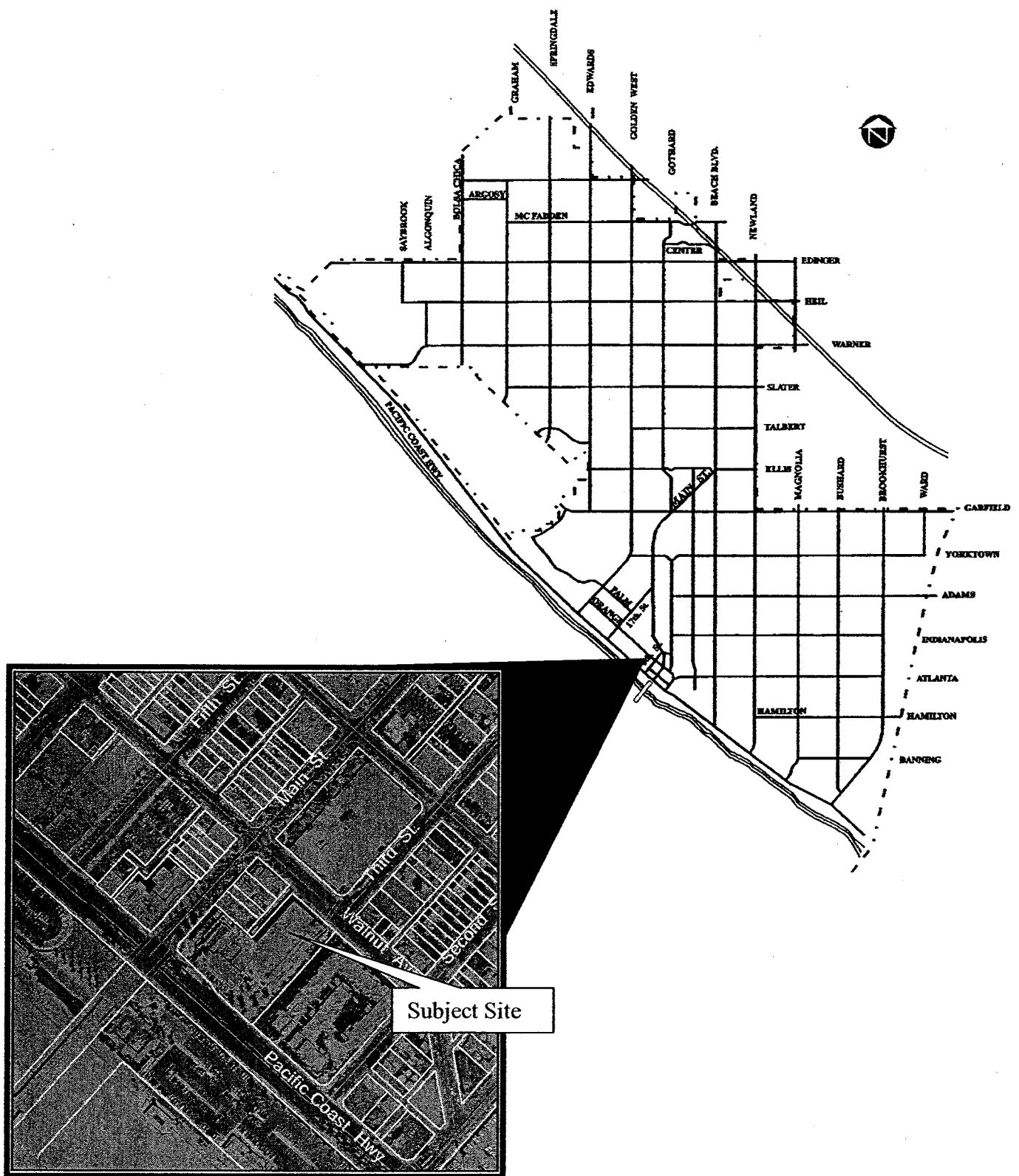
There have been no public meetings regarding this request. To date, there have been no comments from the public regarding this request.

PLANNING ISSUES

The proposed restaurant is located at Pierside Pavilion in an area of the building, which has historically been operated by restaurants and/or live entertainment uses. A series of previous uses have been approved in the location that included a restaurant/nightclub with dancing, karaoke bar with dancing, and billiard hall with food service and outdoor dining. The required parking for the proposal is available based on an analysis of required parking provided for the previous approved uses. Phase One of the outdoor dining area (400 sq. sq.) alone does not require additional parking spaces. However, when combined with the request for Phase Two of the outdoor dining area, additional parking is required for the entire outdoor dining area. The applicant requests approval of the entire 1,000 sq. ft. of outdoor dining, but requests a condition of approval that permits Phase Two at such time as adequate parking for the outdoor dining can be demonstrated or provided consistent with applicable code requirements.

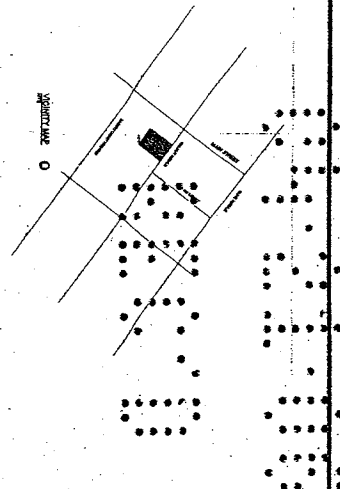
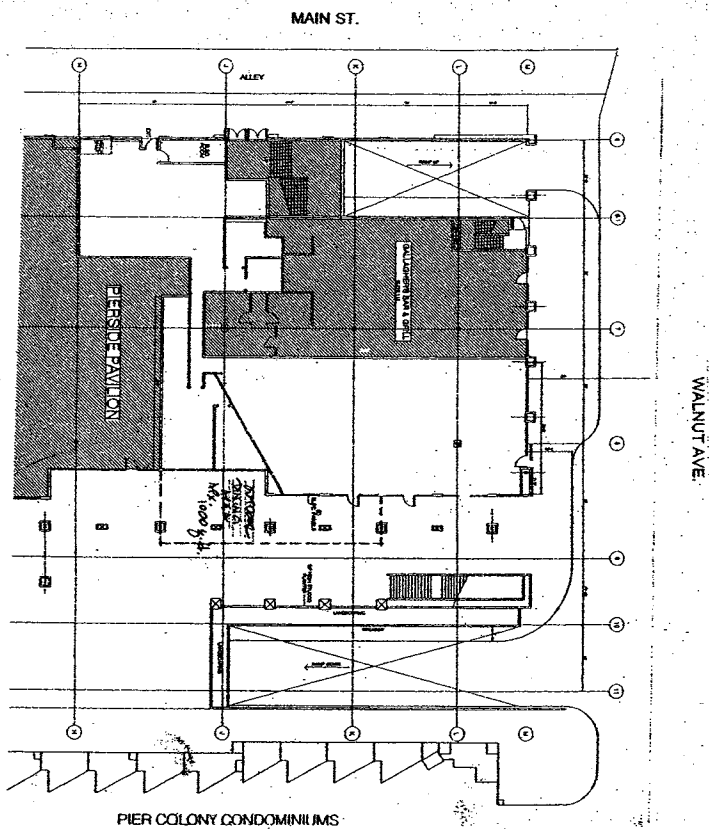
ATTACHMENTS:

1. Vicinity Map
2. Project Plans – Received and Dated May 31, 2006
3. Police Department comments received and dated June 21, 2006

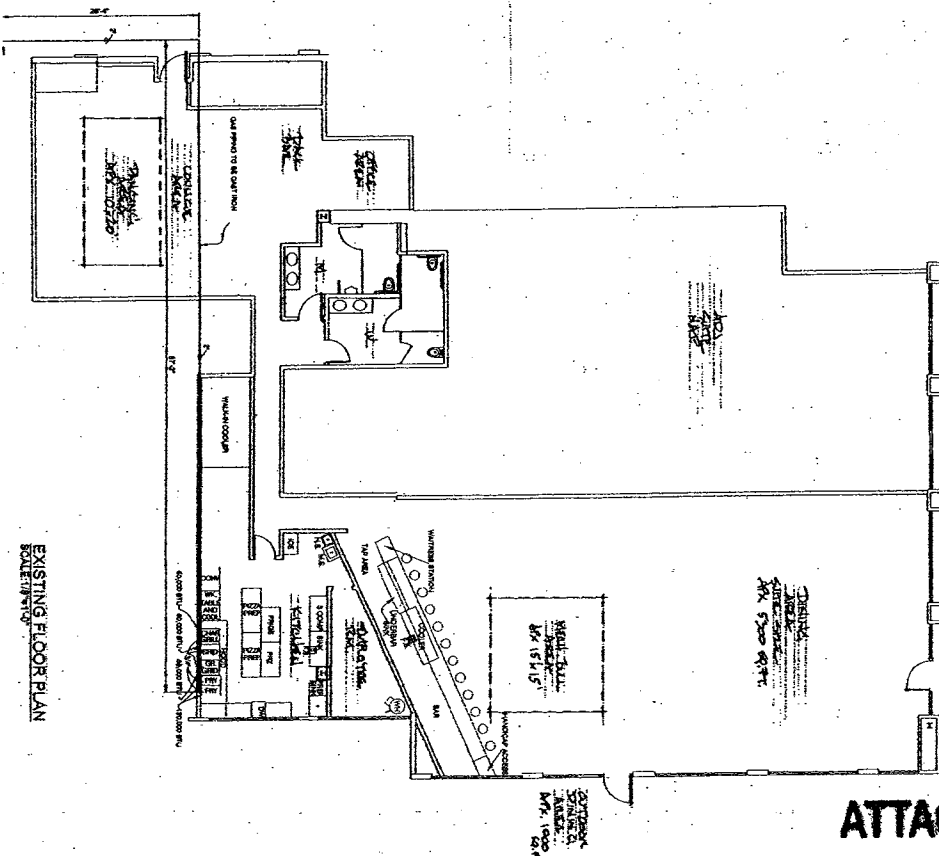


VICINITY MAP
CONDITIONAL USE PERMIT NO. 06-20 (PONDEROSA STEAKHOUSE – 300 PACIFIC COAST HIGHWAY SUITE NO. 112)

SITE PLAN
SCALE 1/8" = 1'-0"



EXISTING FLOOR PLAN
SCALE 1/8" = 1'-0"



ATTACHMENT NO. 2.2

CESAR PENA
(562) 618-6848

NEW RESTAURANT PIERSIDE PAVILION

300 Pacific Coast Highway, Suite 112 | Huntington Beach, California





CITY OF HUNTINGTON BEACH

INTER-DEPARTMENT COMMUNICATION

TO: Kenneth W. Small, Chief of Police *CT/AOP*

FROM: Detective Brad Smiley, Special Investigations Bureau

DATE: 06-21-06

SUBJECT: Recommendations for New Establishment
300 Pacific Coast Highway Suite #112

HBPDCHIEF'06JUN2115:57

I met with Cesar Pena, who is planning on opening a new restaurant to be called Ponderosa located at 300 Pacific Coast Highway Suite #112. Mr. Pena is the current owner of the Huntington Beach Beer Co. I have surveyed the location; it is much larger than the average restaurant in the downtown area. It has a very large front room, a large bar in the front room, a large back room, with plans for an additional bar in the back room.

The menu will consist of, "bar and grill" type of food. Similar to the HB Beer Co. menu, according to Mr. Pena. He has applied for a type 47 license from ABC, which is an on sale-eating place.

Mr. Pena is requesting the following:

Live entertainment with limited dancing

D.J.

Mechanical Bull

2-4 pool tables and shuffleboard

A two-section outdoors dining and alcohol sales area located on the east side of the restaurant, west of the Pier Colony Condominiums along the sidewalk.

Phase (1) is 400 square feet, which faces the Pier Colony Condominiums on the northeast corner of the building. Phase (2) is south of phase 1, and is 600 sq. ft. The access to the outdoor dining will be from inside the restaurant.

ATTACHMENT NO. 3.1

Hours of operation:

Dining room: 7:00 am to 2:00 am daily
Outdoor dining: 11:00 am to 9:00 pm Mon. – Thur.
11:00 am to 10:00 pm Fri. – Sun.
Live entertainment: D.J. (w/ overhead sound system)
6:00 pm to 1:30 am daily
Mechanical Bull: On request available during regular
Business hours
Dancing: 9:00 pm to 1:00 am Thur. – Sun.
(limited to back room only)

My recommendations are:

No live entertainment. My main concern is the residents of the Pier Colony Condominiums. I believe, we would have a large increase in calls for service due to the noise from the live band. The door, leading to the outdoor dining, faces the Pier Colony Condominiums.

Another concern is the Edwards Theatres, which is directly above the restaurant. I spoke with the management at the theatre. They expressed their concerns regarding the noise created by a live band. One of their theatres is directly above the restaurant. In the past year they have had 4-5 noise issues with Poseidon (the previous establishment).

The outdoor dining hours I believe should be reduced to between 11:00 am to 8:00 pm Mon – Thur, and 11:00 am to 9:00 pm Fri – Sun. This is due to the potential impact the noise will have on the residents of the condominiums. Mr. Pena assured me he would install a 6-8 ft. sound barrier type of wall, which will surround both sections of the outdoor eating areas. This should be a requirement. All sales of alcohol in the outdoor eating areas will be in conjunction with food sales.

All entry and exit from the patio area should be from inside the restaurant, with only emergency exits directly to the outside.

No dancing:

Mr. Pena is requesting "limited" dancing in the back room. Limited dancing means, he would like to move the pool tables out of the way to make room for dancing on the weekends. There are currently 4 locations in the downtown area, which allow dancing. I believe 4 dancing establishments in the downtown area are sufficient. Another concern is the back door leading to the alley. If dancing

were allowed, I believe we would have problems with persons using this back door, to smoke outside or to socialize in the alley.

D.J.:

I think we should approve a D.J. the last establishment had a D.J. and there was not a significant number of calls due to noise from the D.J. in the last year.

Mechanical Bull:

I would approve a mechanical bull.

I recommend the requested hours of operation, 7:00 A.M. to 2:00 A.M. on Saturday, Sunday, and Holidays be changed to 9:00 A.M. to 1:30 A.M., which is consistent with normal business hours in the downtown area. Also the hours of 11:00 A.M. to 2:00 A.M. on weekdays changed to 11:00 A.M. to 1:00 A.M.

BS:dgm

AGREE
CT
6-21-06



City of Huntington Beach Planning Department **STUDY SESSION REPORT**

TO: Planning Commission
FROM: Scott Hess, Acting Director of Planning
BY: Rosemary Medel, Associate Planner *RM*
DATE: August 22, 2006

SUBJECT: ZONING TEXT AMENDMENT NO. 06-02 (DENSITY BONUS AMENDMENT)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

Zoning Text Amendment No. 06-02 represents a request for the following:

To amend Section 230.14 Affordable Housing Incentives/Density Bonus to comply with state mandated changes pursuant to SB 1818 and SB 435.

CURRENT LAND USE, HISTORY OF SITE, GENERAL PLAN DESIGNATION

LOCATION	GENERAL PLAN	ZONING	LAND USE
City Wide	Residential Low Density, Residential Medium Density, Residential Medium High Density, Residential High Density, Mixed Use	RL (Residential Low Density), RM (Residential Medium Density), RMH (Residential Medium High Density), RH (Residential High Density)	Single Family Multiple Family

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

Not applicable

MANDATORY PROCESSING DATE(S):

Legislative Action

CEQA ANALYSIS/REVIEW

The proposed zoning text amendment is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

SS A-3

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The City Attorney's Office has suggested that Chapter 230 Site Standards, Section 230.14 Affordable Housing Incentives/Density Bonus be amended pursuant to State Law.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

No meetings have been held to date. The zoning text amendment will be published as a public hearing ten days before the meeting.

PLANNING ISSUES

The State of California enacted significant changes to the state's density bonus law, which went into effect on January 5, 2005, via Senate Bill, SB 1818. Subsequently, SB 435, clarifying legislation that supercedes SB 1818, was approved October 2005. Consequently, all California cities must amend their ordinances to bring them into conformance with the new state mandates. The previous law allowed for up to a 25% density bonus when housing projects provided between 10-20% of the units affordable to various income levels or 50% for seniors. The new law reduces the number of and affordability level of the units that a developer must provide in order to receive a density bonus. It further requires that a city provide between one to three concessions or incentives, again depending upon the percentage of affordable units that the developer provides. Chapter 230.14 is being amended to create consistency with State Law. The legislative draft is attached (Attachment No. 1).

The changes to the density bonus ordinance are numerous. To facilitate the review, the principal areas of the legislation are summarized below.

Required Amount of Affordable Units

The following table summarizes what percentage of and what type of units a project has to provide to qualify for a density bonus. The non-qualifying units could be sold/rented at market rates.

TABLE 1: PERCENTAGE OF AFFORDABLE HOUSING REQUIRED TO QUALIFY FOR DENSITY BONUS

Type of Housing	Existing Code	New State Requirement
Lower Income	20%	10 %
Very Low Income	10%	5%
Senior Citizen Housing or Mobilehome Park (<i>that limits residency based on age requirements for the elderly</i>)	50%, for qualifying senior residents	Any senior housing or mobilehome park (<i>that limits residency based on age requirements for the elderly</i>)
Moderate Income - Common Interest Development	NA	10%

Amount of Density Bonus

Unlike previous State law, the new density bonus provisions establish a base density bonus that a project is entitled to if it meets the affordability requirements summarized above. A developer may elect a lesser density bonus. The minimum density bonus for low income, very low income, and senior housing/mobilehome park is 20 percent; the minimum for moderate income housing is five percent.

The new law also creates a sliding scale that allows the amount of the density bonus to increase, up to a certain maximum, as the number of affordable units that are provided increase. Although the law identifies a maximum it also stipulates that a jurisdiction could allow higher density bonuses. Staff recommends that the density bonus be capped at 35%. Table 2 summarizes the sliding scale allowances and are illustrated in the legislation on Attachment 2.4-2.7.

TABLE 2: SLIDING SCALE DENSITY BONUS

Type of Qualifying Housing	Base Density Bonus	Sliding Scale Density Bonus
Lower Income	20%	1.5% increase in density bonus for each 1% increase in lower income affordable units <u>above the initial 10% threshold</u> to a maximum density bonus of 35%
Very Low Income	20%	2.5% increase in density bonus for each 1% increase in very low income affordable units <u>above the initial 5% threshold</u> up to a maximum density bonus of 35%
Senior Citizen Housing or Mobilehome Park Developments	20%	No sliding scale increase
Moderate Income Common Interest Development	5%	1% increase in density bonus for each 1% increase in moderate income affordable units <u>above the initial 10% threshold</u> up to a maximum density bonus of 35%

Table 3 provides examples of how the base density bonus and sliding scale increase apply to a project.

TABLE 3 BASE DENSITY BONUS WITH SLIDING SCALE

General Plan Density	Percentage of Affordable Units	Density Bonus	Total Units Allowed with Density Bonus
15 Units/AC	10% Low	20%= 3 Units	18 Units/AC
15 Units/AC	15% Low	27.5%= 5 Units	20 Units/AC

Incentives and Concessions

The City's current ordinance requires that a minimum of one concession or incentive is provided for a density bonus development. Under the amended density bonus law, the City must grant more concessions or incentives depending on the percentage of affordable units provided. The required number of incentives and concessions are as follows:

TABLE 4: INCENTIVES AND CONCESSIONS

Percentage Affordable by Affordability Category	Number of Incentives or Concessions Required
10% Lower Income, or 5% Very Low Income, or 10% Moderate Income (common interest development)	1
20% Lower Income, or 10% Very Low Income 20% Moderate Income (common interest development)	2
30% Lower Income, or 15% Very Low Income, or 30% Moderate Income (common interest development)	3

As defined in the new State law and the City's proposed ordinance, Concessions or Incentives means any of the following:

1. A reduction in site development standards or modification of zoning code requirements or architectural design requirements that exceed the minimum building standards but not limited to a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
3. Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable, financially sufficient, and actual cost reductions.

Parking Standards

The revised state law enacts reduced parking standards that may be requested for density bonus projects. These onsite standards are inclusive of guest parking and handicapped parking and may be tandem or

uncovered. The change preempts the City's current standard parking requirements. The density bonus revised standards are as follows:

**TABLE 5: PARKING STANDARDS
FOR PROJECTS MEETING AFFORDABLE REQUIREMENTS**

Number of Bedrooms in Unit	Existing City of Huntington Beach Parking Standards	State Maximum Required Parking Spaces (inclusive of handicapped and guest parking)
Studio to 1 bedroom	1 enclosed space per unit plus 0.5 guest parking per unit	1 onsite space
2 to 3 bedrooms	<i>2 bedrooms:</i> 2 spaces (1 enclosed) per unit plus 0.5 guest parking per unit. <i>3 or more bedrooms:</i> 2.5 spaces (1 enclosed) per unit plus 0.5 guest parking per unit.	2 onsite spaces
4 or more bedrooms	<i>See 3 or more bedroom requirement above.</i>	2.5 onsite parking spaces

Waiver and Modification of Development Standards

The City may not impose a development standard that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting incentives and concessions, applicants may request the waiver of an unlimited number of development standards by showing that the waivers are needed to make the project economically feasible.

Child Care Facilities

A developer that proposes construction of a housing development that includes affordable units pursuant to 230.14 B (Affordability Requirements) and includes a childcare facility that is located onsite, adjacent to or a part of the development is eligible for concessions. The incentives or concessions include the following:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.
2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

Attachment

1. Legislative Draft
2. SB 435

DENSITY BONUS AMENDMENT

230.14 Affordable Housing Incentives-Density Bonus

A. When a developer of a residential property which is zoned and general planned to allow five (5) or more dwelling units proposes to provide affordable housing, he or she may request a density bonus and/or other incentives **or concessions** through a conditional use permit subject to the provisions contained in this section. A density bonus request pursuant to the provisions contained within this section shall not be denied unless the project is denied in its entirety.

DB. Affordability requirements.

1. Percentage of affordable units required. To qualify for a density bonus and/or other incentives **or concessions**, the developer of a residential project must agree to **shall elect at least** one of the following:
 - a. Provide at least ~~ten~~ twenty percent (**10% 20%**) of the total units of the housing development for lower income households, **as defined in Health and Safety Code section 50079.5**; or
 - b. Provide at least ~~five~~ ten percent (**5% 10%**) of the total units of the housing development for very low income households, **as defined in Health and Safety Code section 50105**; or
 - c. **Provide a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5; or Provide at least fifty percent (50%) of the total units of the housing development for qualifying senior residents.**
 - d. **Provide at least ten percent (10%) of the total dwelling units in a common interest development for moderate income households as defined in Civil Code Section 1351 for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.**

The density bonus shall not be included **in the total number of the housing units** when determining the number of housing units required to be affordable. Remaining units may be rented, sold, or leased at "market" rates.

If a developer is ~~granted a density bonus in excess of twenty-five percent (25%)~~, those additional units above the twenty-five percent (25%) may be required to be maintained affordable for "moderate income" households.

2. Duration of affordability. **An applicant shall agree to, and city shall ensure, continued affordability of all low and very low income units that qualified the applicant for the award of the density bonus** Units required to be affordable as a result of the granting of a density bonus and other incentives shall remain affordable for thirty (30) years **or** If the City does not grant at least one concession or incentive pursuant to this chapter in

addition to the density bonus, or provides other incentives in lieu of the density bonus, those units required to be affordable shall remain so for ten (10) years a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Where there is a direct financial contribution to a housing development pursuant to Government Code Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city will assure continued availability for low- and moderate-income units for 30 years. The affordability agreement required by Section 230.14B.4 shall specify the mechanisms and procedures necessary to carry out this section.

An applicant shall agree to, and the city shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50052.550093 of the Health and Safety Code. The eCity shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following shall apply to the equity-sharing agreement:

- a. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.
 - b. The eCity's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
 - c. The eCity's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.
3. Affordable unit distribution and product mix. Affordable units shall be located throughout the project and shall include a mixture of unit types in the same ratio as provided throughout the project.
 4. Affordability agreement. Affordability shall be guaranteed through an "Affordability Agreement" executed between the developer and the City. Said agreement shall be recorded on the subject property with the Orange County Recorder's Office as provided in Section 65915, et seq. of the California Government Code, prior to the issuance of building permits and shall become

effective prior to final inspection of the first unit. The subject agreement shall be legally binding and enforceable on the property owner(s) and any subsequent property owner(s) for the duration of the agreement. The agreement shall include, but is not **be** limited to, the following items:

- a. ~~The number of and~~ duration of the affordability **and the number of** ~~for the~~ affordable units;
 - b. The method in which the developer and the City are to monitor the affordability of the subject affordable units and the eligibility of the tenants or owners of those units over the period of the agreement;
 - c. The method in which vacancies will be marketed and filled;
 - d. A description of the location and unit type (bedrooms, floor area, etc.) of the affordable units within the project; and
 - e. Standards for maximum qualifying household incomes and standards for maximum rents or sales prices.
5. City action. Pursuant to this section the City shall:
- a. Grant a density bonus and at least one of the concessions or incentives identified in Section 230. ~~14CD 18B~~ unless the City makes a written finding **pursuant to Section 230.14IJ**, ~~that the additional concession or incentive is not required in order for rents or mortgage payments to meet the target rates; or~~
 - b. ~~Provide other incentives of equal value to a density bonus as provided in Section 65915, et seq. of the California Government Code. The value of the other incentives shall be based on the land cost per dwelling unit.~~

C. Calculation of Density Bonus

1. **The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the project's percentage of affordable housing exceeds the percentage established in Section 230.14 B.**
 - a. **For housing developments meeting the low income criteria of Section 230.14B.1.a, the base density bonus of 20 percent shall be increased by one and one-half percent for every one percent increase in the percentage of low income units above 10%. The maximum allowable density bonus shall be 35 percent.**
 - b. **For housing developments meeting the very low income criteria of Section 230.14 B.1.b, the base density bonus of 20 percent shall be increased by two and one-half percent for every one percent increase in the percentage of very low income units above 5%. The maximum density bonus shall be 35 percent.**

- c. For housing developments meeting the senior citizen housing criteria of Section 230.14B.1.c, the density bonus shall be 20 percent.
- d. For housing developments meeting the moderate income criteria of Section 230.14B.1.d, the base density bonus of five percent shall be increased by one percent for every one percent increase in the percentage of moderate income units over 10%. The maximum density bonus shall be 35 percent.

2. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in Section B, "total units" does not include units permitted by a density bonus awarded pursuant to this section.

3. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required affordable units pursuant to subsection 230.14B.1.

C. Target rents/mortgage payments:

- 1. ~~For the purpose of this section, units designated for moderate income household shall be affordable at a rent or mortgage payment that does not exceed twenty-five percent (25%) of the gross family income.~~
- 2. ~~For the purpose of this section, units designated for lower income households shall be affordable at a rent or mortgage payment that does not exceed thirty percent (30%) of sixty percent (60%) of the Orange County median income as defined by the State of California Department of Housing and Community Development.~~
- 3. ~~For the purpose of this section, those units designated for very low income households shall be affordable at a rent or mortgage payment that does not exceed thirty percent (30%) of fifty percent (50%) of the Orange County median income as defined by the State of California Department of Housing and Community Development.~~

DB. Incentives and Concessions

- 1. Types of incentives or concessions. The City may ~~shall~~ grant an incentives or concessions to the developer. An incentive or concession includes, but is not limited to, the following:

1. A density bonus as follows:

- a2. A reduction in site development standards or **modification of zoning code requirements or** architectural design requirements which **that** exceed the minimum building standards contained within **approved by the California**

Uniform Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, ~~Code as adopted by the City including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.~~ ~~lot coverage, floor area ratio, parking and open space requirements.~~

- i. At the request of the developer, the City will permit a vehicular parking ratio, inclusive of handicapped and guest parking, ~~offer~~ for a development meeting the criteria of Section 230.14B at ratios that shall not exceed:
 1. Zero to one bedroom: one onsite parking space.
 2. Two to three bedrooms: two onsite parking spaces.
 3. Four and more bedrooms: two and one-half onsite parking spaces.
 - ii. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this Section only, a housing development may provide "onsite parking" through tandem parking or uncovered parking but not through on-street parking.
- 2b. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
4. ~~A reduction in development and/or processing fees.~~
- ~~c5.~~ Other regulatory incentives or concessions proposed by the developer or the City which ~~that~~ result in identifiable, **financially sufficient, and actual** cost reductions.
6. ~~Financial assistance by the City, i.e., housing set-aside funds.~~
7. ~~Other incentives mutually agreeable to the City and developers consistent with all City, State and Federal laws, rules, standards, regulations and policies.~~
2. **Number of Incentives and Concessions.** An applicant for a density bonus shall receive the following number of incentives or concessions:
- a. One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

- b. Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.
- c. Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

E. Waiver or Reduction of Development Standards: An applicant may submit to the city a proposal for the waiver or reduction of development standards. Nothing in this section shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

F. Donation or Transfer of Land. A developer may donate or transfer land in lieu of constructing the affordable units within the project pursuant to Government Code § 65915 (h).

G. Child Care Facilities.

- 1. When a developer proposes to construct a housing development that includes affordable units that conform to Section 230.14 B and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the City shall grant either of the following:
 - a. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
 - b. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- 2. A housing development shall be eligible for the density bonus or concession described in this Section if the City makes all of the following findings:
 - a. The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to Section 230.14 B.2.

- b. **Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed required to be affordable to very low income households, low income households, or moderate income households.**
- 3. **Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.**

E-H. Procedure.

- 1. In addition to submitting all documentation required to apply for a conditional use permit, a developer requesting a density bonus ~~or other incentive~~ pursuant to this section shall include the following in the written narrative supporting the application:
 - a. A general description of the proposed project, general plan designation, applicable zoning, maximum possible density permitted under the current zoning and general plan designation and such other information as is necessary and sufficient. The property must be zoned and general planned to allow a minimum of five (5) units to qualify for a density bonus.
 - ~~db.~~ A statement detailing the number of density bonus units being proposed over and above the number of units normally permitted by the applicable zoning and general plan designations.
 - c. **A description of the requested incentive or concessions** ~~In the case that the developer requests, the City to modify development standards as another incentive, a statement providing a detailed explanation as to how the requested incentive will enable the developer to provide housing at the target rents or mortgage payments. Modification of development standards will be granted only to the extent necessary to achieve the housing affordability goals set forth herein.~~
 - ~~bd.~~ A calculation of the density bonus allowed.
- 2. All subsequent City review of and action on the applicant's proposal for a density bonus and/or consideration of any requested ~~other incentives~~ **or concessions** shall occur in a manner concurrent with the processing of the conditional use permit and any other required entitlements, if any. If the developer proposes that the project not be subject to impact fees or other fees regularly imposed on a development of the same type, final approval will be by the City Council.
- 3. The Planning Commission/City Council shall review the subject Affordability Agreement concurrently with the development proposal. No project shall be deemed approved until the Affordability Agreement has been approved by the City Council. (3710-6/05)
- 4. The Planning Commission/City Council may place reasonable conditions on the granting of the density bonus and any other incentives as proposed by the

applicant. However, such conditions must not have the effect, individually or cumulatively, of impairing the objective of California Government Code Section 65915 et seq., and this section, ~~of to~~ providing affordable housing for qualifying residents, ~~lower or very low income households in residential projects.~~

5. A monitoring fee, as established by resolution of the City Council, shall be paid by the applicant to the City prior to issuance of a certificate of occupancy for the first unit. This fee shall be in addition to any other fees required for the processing of the conditional use permit, environmental analysis, and/or any other entitlements required.

FI. Required findings for approval.

1. Density bonus. In granting a conditional use permit for a density bonus, the Planning Commission/City Council shall make all of the following findings:
 - a. The proposed project, which includes a density bonus, can be adequately serviced by the City and County water, sewer, and storm drain systems without significantly impacting the overall service or system.
 - b. The proposed project, which includes a density bonus, will not have a significant adverse impact on traffic volumes and road capacities, school enrollments, or recreational resources.
 - c. The proposed project, which includes a density bonus, is compatible with the physical character of the surrounding area.
 - d. The proposed project, which includes a density bonus, is consistent with the overall intent of the General Plan.
 - e. If located within the coastal zone, the proposed project which includes a density bonus will not result in the fill, dredge, or diking of a wetlands. (3334-6/97)
2. ~~Other incentives.~~ A request for an additional incentive shall not be denied by the Planning Commission or City Council unless a finding is made that the incentive is not necessary to the establishment of affordable units.

In granting any other incentives as defined in this section, the Planning Commission/City Council shall be required to make all of the following findings:

- ~~a. The granting of the proposed other incentive(s) will not have an adverse impact on the physical character of the surrounding area.~~
- ~~b. The granting of the proposed other incentive(s) is consistent with the overall intent of the General Plan.~~
- ~~c. The granting of the proposed other incentive(s) will not be detrimental to the general health, welfare, and safety of persons working or residing in the vicinity.~~
- ~~d. The granting of the proposed other incentive(s) will not be injurious to property or improvements in the vicinity.~~

- e. ~~The granting of the proposed other incentive(s) will not impose an undue financial hardship on the City.~~
- f. ~~If the other incentive is a modification of development standards, the granting of the other incentive is necessary to achieve the target affordable rents/mortgage payments for the affordable units.~~
- g. ~~The granting of the proposed other incentive will not result in the filling or dredging of wetlands. (3334-6/97)~~

J. Required findings for denial.

1. **Concessions or Incentives.** The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of either of the following:
 - a. The concession or incentive is not required in order to provide affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c).
 - b. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate-income households.

BILL NUMBER: SB 435 CHAPTERED
BILL TEXT

CHAPTER 496
FILED WITH SECRETARY OF STATE OCTOBER 4, 2005
APPROVED BY GOVERNOR OCTOBER 4, 2005
PASSED THE SENATE AUGUST 30, 2005
PASSED THE ASSEMBLY AUGUST 22, 2005
AMENDED IN ASSEMBLY AUGUST 18, 2005
AMENDED IN ASSEMBLY JUNE 21, 2005
AMENDED IN SENATE APRIL 13, 2005
AMENDED IN SENATE MARCH 29, 2005

INTRODUCED BY Senator Hollingsworth

FEBRUARY 17, 2005

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, Hollingsworth Housing: density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would include within those eligibility requirements the construction of a mobilehome park that limits residency based on age requirements for housing for older persons and the construction, for persons and families of moderate income, of a community apartment project and a stock cooperative.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that local governments encourage, to the maximum extent practicable, the location of housing developed pursuant to Section 65915 of the Government Code in urban areas with adequate infrastructure to serve the housing.

SEC. 2. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing

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development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which

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shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5,

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upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

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13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
-------------------------------------	--------------------------

5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
--------------------------------------	--------------------------

10	5
11	6
12	7
13	8

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14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total

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units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

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(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period

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of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct

ATTACHMENT NO. 2.9

financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

ATTACHMENT NO. 2.10